

Internal Revenue Service

Number: **200709008**

Release Date: 3/2/2007

Index Number: 61.00-00, 6041.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:IT&A:05

PLR-112885-04

Date:

November 13, 2006

In Re:

LEGEND:

City =

State =

Program A =

Program B =

Dear . :

This letter responds to your ruling request submitted on behalf of the City by a letter dated November 26, 2003, as supplemented on February 19, 2004. Your request relates to whether the City is required to file information returns for payments made under the Programs described below. The reporting requirement for these payments depends in part upon whether the payments are taxable income to the recipients; consequently, the necessary analysis of the nature of the payments to the recipients is herein included.

BACKGROUND

The City is a municipal government incorporated under the laws of State. The City implemented Programs A and B to revive the City's downtown commercial buildings by providing incentives to building owners and long-term tenants to undertake renovation projects. In particular, Program A was established to rehabilitate the interior, and Program B was established to restore the exterior, of the City's downtown commercial

buildings. Building owners and long-term tenants of the City's downtown commercial buildings are entitled to participate in the Programs regardless of their income levels or financial needs.

In order to receive assistance from the City under the Programs, building owners and long-term tenants of the City's downtown commercial buildings must satisfy several conditions. The conditions generally include hiring local prevailing wage contractors who are licensed by the City for projects, prepayment of project costs, and an agreement to permit the City to inspect the completed projects and documents involved in the projects. Once the conditions are satisfied, the City reimburses project costs to the qualified applicants up to a set maximum amount.

LAW AND ANALYSIS

Section 6041 of the Internal Revenue Code (hereinafter the "Code") requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Internal Revenue Service (hereinafter the "Service") and to furnish an information statement to the payee.

As used in section 6041 of the Code, only fixed or determinable (i.e., taxable) income must be reported. The payments of compensation (and other amounts) required to be reported under section 6041 are those includible in gross income under section 61 of the Code. Accordingly, in order to decide whether the City is required to furnish an information return to the recipients of assistance under the Programs, it is necessary to examine whether the payments are includible in gross income.

Section 61(a) of the Code and the Income Tax Regulations (hereinafter the "Regulations") thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived. See also section 1.61 -1(a) of the Regulations. Under section 61, Congress intended to tax all gains or undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955).

However, the Service has consistently concluded that payments to individuals by governmental units under legislated social benefit programs for the promotion of the general welfare of the public are not includible in a recipient's gross income. See, e.g., Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840. To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of general welfare (i.e., generally based on individual or family

needs such as housing, education, and basic sustenance expenses), and (iii) not represent compensation for services. Rev. Rul. 75-246, 1975-1 C.B. 24; Rev. Rul. 76-144, 1976-1 C.B. 17; Rev. Rul. 82-106, 1982-1 C.B. 16. Payments to businesses, generally, do not qualify under the general welfare exclusion because the payments are not based on individual or family needs. See Bailey v. Commissioner, 88 T.C. 1293, 1300-01 (1987), acq., 1989-2 C.B. 1; Notice 2003-18, 2003-1 C.B. 699.

In Rev. Rul. 76-395, 1976-2 C.B. 16, the Service ruled that payments made to low-income individuals primarily in order to subsidize home improvements necessary to correct building code violations and thereby provide safe and decent housing were excluded from the recipients' income under the general welfare doctrine.

In Rev. Rul. 76-131, 1976-1 C.B. 16, the Service ruled that payments made by the State of Alaska to long-term residents were not excluded by the general welfare exclusion because the payments were based on the recipient's age and residency requirements, regardless of financial or employment status, health, or educational background.

In Rev. Rul. 2005-46, 2005-30 I.R.B. 120, the Service concluded that a grant that a business received under a state program to reimburse losses from a natural disaster was not excluded under the general welfare doctrine.

The Programs here differ materially from the home rehabilitation program described in Rev. Rul. 76-395. The renovations subsidized by the Programs are for commercial buildings and not for the promotion of general welfare, which is based on individual or family needs. Therefore, payments made pursuant to the Programs are not excluded from gross income under the general welfare doctrine and are includible in gross income. See Bailey at 1300-01. Accordingly, the City is required to file information returns with the Service and to furnish information statements to the recipients with respect to payments under the Programs. Form 1099-MISC should be used, and the amount of the assistance should be included in box 3 as "Other Income."

CONCLUSION

For these reasons, we conclude that payments under the Programs will represent gross income to the qualified applicants, and that the City is subject to the resulting information reporting requirements of section 6041 with respect to the Programs, unless the recipient is a corporation or other specified entity, payment to which is exempt under section 1.6041-3(p) of the Regulations.

This document may not be used or cited as precedent. See section 6110(k)(3) of the Code.

Sincerely,

John Aramburu
Senior Counsel
Branch 5
Associate Chief Counsel
(Income Tax & Accounting)